

Wage and Hour Division, Labor

§ 790.21

RESTRICTIONS AND LIMITATIONS ON EMPLOYEE SUITS

§ 790.20 Right of employees to sue; restrictions on representative actions.

Section 16(b) of the Fair Labor Standards Act, as amended by section 5 of the Portal Act, no longer permits an employee or employees to designate an agent or representative (other than a member of the affected group) to maintain, an action for and in behalf of all employees similarly situated. Collective actions brought by an employee or employees (a real party in interest) for and in behalf of himself or themselves and other employees similarly situated may still be brought in accordance with the provisions of section 16(b). With respect to these actions, the amendment provides that no employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought. The amendment is expressly limited to actions which are commenced on or after the date of enactment of the Portal Act. Representative actions which were pending on May 14, 1947 are not affected by this amendment.¹²⁶ However, under sections 6 and 8 of the Portal Act, a collective or representative action commenced prior to such date will be barred as to an individual claimant who was not specifically named as a party plaintiff to the action on or before September 11, 1947, if his written consent to become such a party is not filed with the court within a prescribed period.¹²⁷

§ 790.21 Time for bringing employee suits.

(a) The Portal Act¹²⁸ provides a statute of limitations fixing the time limits within which actions by employees under section 16(b) of the Fair Labor

Standards Act¹²⁹ may be commenced, as follows:

- (1) Actions to enforce causes of action accruing on or after May 14, 1947; two years.
- (2) Actions to enforce causes of action accruing before May 14, 1947.¹³⁰ Two years or period prescribed by applicable State statute of limitations, whichever is shorter.

These are maximum periods for bringing such actions, measured from the time the employee's cause of action accrues to the time his action is commenced.¹³¹

(b) The courts have held that a cause of action under the Fair Labor Standards Act for unpaid minimum wages or unpaid overtime compensation and for liquidated damages "accrues" when the employer fails to pay the required compensation for any workweek at the regular pay day for the period in which the workweek ends.¹³² The Portal

¹²⁹ Sponsors of the legislation stated that the time limitations prescribed therein apply only to the statutory actions, brought under the special authority contained in section 16(b), in which liquidated damages may be recovered, and do not purport to affect the usual application of State statutes of limitation to other actions brought by employees to recover wages due them under contract, at common law, or under State statutes. Statements of Representative Gwynne, 93 Cong. Rec. 1491, 1557-1588; colloquy between Representative Robsion, Vorys, and Celler, 93 Cong. Rec. 1495.

¹³⁰ This refers to actions commenced after September 11, 1947. Such actions commenced on or between May 14, 1947 and September 11, 1947 were left subject to State statutes of limitations. As to collective and representatives actions commenced before May 14, 1947, section 8 of the Portal Act makes the period of limitations stated in the text applicable to the filing, by certain individual claimants, of written consents to become parties plaintiff. See Conference Report, p. 15; § 790.20 of this part.

¹³¹ Conference Report, pp. 13-15.

¹³² *Reid v. Solar Corp.*, 69 F. Supp. 626 (N.D. Iowa); *Mid-Continent Petroleum Corp. v. Keen*, 157 F. (2d) 310, 316 (C.A. 8). See also *Brooklyn Savings Bank v. O'Neil*, 324 U.S. 697; *Rigopoulos v. Kervan*, 140 F. (2d) 506 (C.A. 2).

In some instances an employee may receive, as a part of his compensation, extra payments under incentive or bonus plans, based on factors which do not permit computation and payment of the sums due for a particular workweek or pay period until some time after the pay day for that period.

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¹²⁶ Conference Report, p. 13.

¹²⁷ Conference Report, pp. 14, 15. The claimant must file this consent within the shorter of the following two periods: (1) Two years, or (2) the period prescribed by the applicable State Statute of limitations. See Conference Report, p. 15.

¹²⁸ See sections 6-8 inclusive.